

**SPECIAL COMMITTEE ON RIVERFRONT ACTIVITIES  
AND BASEBALL**

**November 3, 2004**

**6:15 PM**

Chairman Lopez called the meeting to order.

The Clerk called the roll.

Present: Aldermen Lopez, Gatsas, Guinta, DeVries, Smith

Messrs: K. Clougherty, T. Clark, F. Thomas, B. Brooks

Chairman Lopez stated we will address Item b first.

b) stadium and financial reports (Public Works Director).

Frank Thomas, Public Works Director, stated this last round of requisitions we received some change orders from the team Payton Construction totaling \$365,000. In the packet of information that I sent you, the change orders are noted in detail. Also is a copy of correspondence that I authorized partial payment; I authorized payment to Payton Construction for work done under the GMP, but I did not authorize payment of the change orders. These change orders in my opinion are justifiable, but they are outside the overall budget for the project. The development agreement requires that any costs over the overall budget has to be born by the team, the actual language notes that these funds should be identified and the money turned over to the City and placed into an escrow account and then the City would be making payments out of that escrow account. However, in discussing the issue with the Solicitor's office, we're both in agreement that an alternative to that would be to have the team pay those change orders directly and furnish us proof that payment has been made. I haven't gotten a detailed response yet from the team, but I believe that they are heading in the direction of paying directly, but Bob Brooks could speak to that point.

Bob Brooks, PB Sports, owner's representative of the Fisher Cats, stated this was the first time that we encountered the change order process so we thought we would put it through the City in order for everybody first to be aware that there were change orders and to establish a process for that. In discussion with Frank Thomas and also Drew Webber, it appears Drew is leaning towards paying. He

hasn't given an official okay yet, but it looks like he would rather directly pay the contractor and show proof of payment to the City. It sort of doesn't make sense when you think about it of putting money in escrow rather than having them pay directly. So he's leaning towards doing that. I'm waiting to hear back from him in order for him to initiate payment on those invoices.

Chairman Lopez asked City Solicitor and Finance Officer, wasn't that the agreement though that if they went over they would put money in escrow and how does the legality of this come about?

Tom Clark, City Solicitor, replied the agreement is that if anything over the guaranteed maximum price or the budget, if it looks like it's going to go over that amount, that they have agreed to place money in escrow if the City is going to reimburse them for those funds. If they're not looking for the City to reimburse them those funds, it's okay if they pay directly, as long as we get proof that the payments have been made.

Alderman Gatsas asked can you explain that a little bit more clearer please?

Mr. Clark answered they invoice the City for payments out of the bond funds. If the invoices go over the bond funds, if we're going to pay them, they have to escrow the funds to us. What we're saying the alternative is that they don't invoice us, that they just pay those directly.

Alderman Gatsas asked when you say we pay them, you just meant that we would be the paymaster for them and not us paying them?

Mr. Clark answered correct. We just have the funds flow through us and nothing else.

Alderman DeVries stated I guess my question would be this is written around the \$19 million GMP and the expectation is these change orders will in fact push us over the \$19 million GMP. If in fact at the end of the day for some freak reason we end up under the \$19 million, what would happen if these items have already been paid by the Fisher Cats directly? Would the City reimburse out of the \$19 million or...?

Mr. Brooks replied that's a good question because this is the first time it's up. So we're trying to establish a process that everybody agrees to and it would appear, let's say if it came in at \$18 million and Drew paid for these, if they're approved and there was money left in the budget, then Drew could submit an invoice for reimbursement of these.

Mr. Thomas stated and I'd have to agree with that. These are justified project costs; they are project costs over and above what was identified in the GMP. Again, as you mentioned if for whatever reason the GMP comes under, I believe that the team would have the ability to submit a request for reimbursement. However, I don't believe that the likelihood of that happening is too great.

Alderman DeVries stated follow up because I understand the likelihood is not great. Has anybody addressed this situation further? Would we potentially be subject to interest for the amount of time he's been out for the initial disbursements if in fact it does come in under the \$19 million? I mean are we really going to work out the detail on this and get something in writing so that there is a process in place?

T. Clark replied as I understand it, if he goes and pays these directly and somehow the project comes in under budget and there's money left over, he can reinvoice us for reimbursement for valid project cost, but there's no agreement that we'd pay interest or anything. These are monies that he should have known were going to be available. If they're available, they're available for reimbursement.

Alderman DeVries stated I'm not suggesting that there should be such an agreement, I'm just saying I would prefer to know that everything is addressed today and that all the detail is worked out and in writing so that we're not caught by surprise should it come in under \$19 million and there is a request for reimbursement of interest. So I guess I'm just asking has any staff gone there and do you need to go there...?

Mr. Thomas responded I think it's a good point that you're bringing up and quite frankly as Bob mentioned, we haven't worked out the details because we haven't gotten a proposal from the team on how this is to be handled. Right now what is in effect is the development agreement that requires the money to be turned over and to be placed in an escrow account. Obviously we would define the fact that we would not be paying interest on any of these monies should they be eligible for reimbursement at a later date because the intent of the agreement is not to pay any interest, whether it's on the part of a consultant or contractor who hasn't been paid in the normal 30-day period, etc. Because we have not paid interest, we've had invoices submitted by various parties looking for interest on late payments and both the City and team has refused paying interest. So I think it's a good point, I think it's a clarification that we would have to put down in writing once we have a detailed proposal from the team.

Alderman Gatsas stated I noticed, Mr. Brooks, on invoice for the original cost of the roadway has a 3-percent fee. Can you explain to me what that 3-percent fee is?

Mr. Brooks answered that's Payton's markup. As you note on all of the invoices, Payton has a 3-percent fee over and above their costs.

Alderman Gatsas asked what is that fee for?

Mr. Brooks answered that's basically their profit.

Alderman Gatsas asked can you tell me why if you go one more invoice in it was waived?

Mr. Books answered yes. You're referring to the steel project.

Alderman Gatsas replied correct.

Mr. Brooks replied when Payton came in with their bid, if you will, to Drew and given that the price of steel was escalating, they gave Drew a price of \$137,000. If there was any markup, they would have included it in. I felt that they were trying to... The 3-percent fee on the markup was included in the \$137,000. I brought it to Payton's attention, they agreed, that's why I crossed it off, instead of having them resubmit, I just crossed it off so that the 3-percent is included in the \$137,000.

Alderman Gatsas stated I guess back to where the City Solicitor is talking, but allowing them to pay directly to Payton, doesn't that take the City outside the mechanic's lien process?

Mr. Clark answered in the development agreement it calls for them to escrow it so that it would be the paymaster and it would go through us. If they want to do it separately and pay direct, we're going to require a written agreement with the team that they provide us with waivers of all liens to make sure that everything has been paid.

Alderman Gatsas asked have we've gotten those up?

Mr. Clark answered we haven't gotten tot hat point yet. Nothing outside the \$19 million has been approved yet. If they're going to, we're going to make sure that the team gets us all waivers of liens and they're going to have to sign for them.

Alderman Gatsas asked so is it my understanding that since August 10<sup>th</sup> when Payton sent invoices out, they haven't been paid for this stuff?

Mr. Thomas answered that is correct. We have only seen these submitted within the last couple of weeks. Evidently the team has been sitting on these change orders until recently.

Alderman Gatsas asked any comment on them Mr. Brooks?

Mr. Brooks answered yes. There's a process in place that Payton basically submits potential change orders, we review them, we ask for information, once we sign them it goes back to Payton, Payton then issues them in an invoice. The first that came in was Invoice #5, I believe, which included the month the September. So this is the first time it showed up on an invoice which they have submitted to us, so that once we approve that invoice...it starts out as a potential change order as you see on the top of their letterhead, and then again it could take a day or it could take two weeks until that potential change order is approve depending on if it contains substantial information. Or else in the case of the steel, we reviewed it and said your 3-percent fee is included in the price. So there's a process involved. Once we then approve it by signature, then it goes back to Payton, they then determine within what invoice they want. So although it was signed at that point in time, they did not submit it. The first submittal of their change order was in their payment request #5, which Frank reviewed and sent the letter out.

On motion of Alderman Smith, duly seconded by Alderman DeVries, it was voted that the Public Works Director and City Solicitor draw up an alternative agreement that the Team pay change orders directly and furnish the City with proof that payment has been made.

a) closing on the Roedel property (Finance Officer & Solicitor)

Kevin Clougherty, Finance Officer, stated you may recall at the time that the closing for the retail and the residential was going on there were three issues that were remaining outstanding with the hotel. The primary issue was environmental concerns. There were issues also then about carrying the cost of the outfield wall with the baseball team the batter's eye. We have within the last hour received letters from both David Roedel and Bob Brooks. It is our understanding that they have overcome all of the environmental issues so those are no longer an obstacle at the closing. We understand there was a meeting this morning so that they were able to take a look at the cost associated with batter's eye and the wall. From what I gather from these letters, they have some idea of an agreement that has to be talked to Drew Webber. Drew will be available on Monday. Drew wants to have his attorney look at these before he gives final approval or an approval to this. So I believe that's where we are at the current time. I'd to if I can hand out these letters so that everybody gets a chance to look at them and maybe we can discuss after people have had a chance to look at them.

Chairman Lopez stated while we're looking at that letter, the closing was supposed to be done by the 26<sup>th</sup>. Money has been exchanged in the bank in escrow, or what?

Mr. Clougherty answered that's right. The hotel has provided the funds to escrow, has signed most of the documents, and the one obstacle is the City wants to make sure that in their agreements to cover costs for the wall and the batter's eye, that there's no chance that any of those costs could be passed onto the City and we want both parties to sign off on that.

Chairman Lopez stated but the closing on the land was an issue with the City and that was the agreement for the environmental. I'm having a hard time understanding why Roedel won't close on the land. Just because there's an issue with the Fisher Cats?

Mr. Clougherty answered no, the Roedel's, as you'll recall, the primary concern was the DES and they crossed that hurdle. The other two remaining issues are the cost the wall that's going to serve as a support for the hotel and serve as the outfield wall and how those costs are going to be divided between those parties. There's also what they call the batter's eye, which is that part of the wall that's a single shade area so that behind the pitcher so that the batters aren't looking into a color field of jersey's and things like that. The discussion, as I understand it, was that the hotel would like to have seen a retractable batter's eye so that when the team was not playing they could lower the batter's eye and have a view into the stadium. Obviously that's more expensive than to put in a regular batter's eye. My understanding is, and again we're not party to these discussions, but my understanding is that the hotel has said that they're willing to go forward with the construction of a stationary batter's eye with the understanding that in a year or two that if they want to go ahead at their own cost and at their own complete cost, that they would be allowed to put in some type of a retractable batter's eye. So I think those are the things that they're trying to work in the last couple of days. Obviously part of those arrangements have to be approved by Mr. Webber. Andrea Batchelder is the attorney, she's in court on a separate case this week, so she just isn't available and I think Drew's reluctant to pass on something until he's had a chance for her to look at it and to talk to her. My understanding is that that will be discussed on Monday.

Chairman Lopez stated I can tell you that I'm very disappointed that after the land. I mean I can have the issue with the Fisher Cats as far as the wall and all of that stuff, but it has nothing to do with building the hotel. The wall is there regardless and who is going to pay for it, but the deal with the City was you buy the land if the environment done and he should buy the land in my viewpoint and move on in life.

Alderman Gatsas stated Mr. Chairman it's nice to see we agree on something. Kevin you said that some of the documents were signed.

Mr. Clougherty answered that's my understanding Alderman.

Alderman Gatsas asked can you tell me which ones haven't been signed?

Mr. Clark stated Alderman maybe I can help. The deed from the City to the Roedel's has been signed, it's being held in escrow, and the purchase price has been transferred to the Ropes & Gray's trust account and being held in escrow.

Alderman Gatsas asked what are the agreements that haven't been signed?

Mr. Clark answered I believe those are the only agreements that are necessary for the closing. Maybe I can help refresh what happened here prior to the 26<sup>th</sup>. The Roedel's had asked for an extension up to the 26<sup>th</sup> in order to take care of their environmental concerns and a few other things.

Alderman Gatsas interjected let me stop you there for a second, because can somebody show me in the agreement that it was something other than the environmental concerns

Mr. Clark replied during that night we also discussed the City entering into a late comers agreement with the Chinburg and with 6 to 4 to 3 as a result of the Roedel's closing separately. The late comers agreement says that Chinburg and the baseball team will paid their fair share of the associated costs if and when the Roedel's purchase or if another purchaser purchases. That's an agreement that the City entered into with the Chinburg's and with 6 to 4 to 3. That's the linchpin here. Now if we could give the Roedel's their deed today, they've given us their purchase price, but the two parties have not agreed on what their fair share of the costs are going to be. To do so may place the City in jeopardy if we just gave them a deed and walked away, because they could claim that the City is not going forward with it's late comers agreement that said they would get a fair share. We've told both parties that if they agree that the City is not in the middle of this, that it's their deal to work on and they can have their deed today, because we've got the purchase price.

Alderman Gatsas stated I guess my confusion comes, Tom, is how is the City in the middle of this transaction when it doesn't have anything to do with the extension that we proceeded to give for the closing? We gave an extension for closing because of contamination, not for anything else.

Mr. Clark replied no, you gave an extension because of the contamination process and also during that you stated that the City would sign a late comer's agreement. That was all part of the discussion, which would require that either the Roedel's or a future purchaser pay their fair share of the cost of the wall.

Alderman Guinta stated that's correct but that wasn't part of the request for a delay. It was solely the environmental issue.

Mr. Clark replied yes, but by giving them that delay because of the environmental issue, it caused ramifications with both baseball and Chinburg, which required a late comers agreement. That was because baseball and the others would not sign off on the subdivision plan until they knew that they would be reimbursed their fair share. In order to close separately, at different times, we had to sign a late comer's agreement. That allow the subdivision to get signed off on and it placed the City in a position of saying you'd get your fair share back. Their fair share of the cost of the wall and the batter's eye. Now as soon as that is taken care of, we'd be happy to give them their deed. If they told us tonight that you're not responsible for that, they can have their deed.

Alderman Guinta asked will you tell me the difference...this letter is what's holding it up? Because they can't come to an agreement on...?

Mr. Clark replied as I understand the letters, I think one side believes they have come to an agreement, the other side is not sure and they wanted to talk to Drew on Monday.

Mr. Clougherty stated remember that Bob Brooks is not in a position to commit. It's really Drew that has to commit on these things. They had their meeting today, they've provided information, it sounds like they're making progress in terms of identifying what the costs are and putting those out so people can have a stand on it.

Alderman Guinta asked just out of curiosity sake, what's the difference...? I'm not sure I'm reading this letter accurately. What's the difference in the wall cost versus the Roedel's estimate? Is it \$66,000 or is it \$10,000?

Mr. Brooks answered the original agreement with the Roedel's was that they were going to pick up the total cost of the wall. Payton Construction went out and got a cost for the wall, Roedel's have indicated that they disagree with the cost. There's issues additionally associated with the wall such as the Roedel's wanted the top 18 inches a special material because it's a patio. So there are additional issues that are unresolved as to the cost of that. There is no doubt though. We only



discussed...we had a positive meeting today, we discussed issues, we don't have total cost of that.

Alderman Guinta asked Roedel is saying is \$66,500?

Mr. Brooks answered that's what they put on the table.

Alderman Guinta asked what was your cost?

Mr. Brooks asked are you referring to the letter that went out today?

Alderman Guinta stated I'm just trying to figure out how much money is holding this up. That's all I'm trying to figure out.

Mr. Brooks replied the Roedel's said that they were willing to pay \$65,500 for a portion of the entire wall. The other portions costs associated with the other portions of the wall were not resolved. Also the batter's eye is not...

Chairman Lopez stated just hold it right there.

Alderman Smith asked Bob, it seems like we come up with a dilemma every week on this situation. I can't understand, and maybe you can explain to me, why the parties weren't there. Why you didn't have somebody from Drew Webber, somebody from Roedel, and yourself there so this would be resolve? Like Alderman Gatsas said, we had October 26<sup>th</sup> was an extension and it seems like we're going from hurdle to hurdle with Roedel. It seems like something comes up all the time. And correct me if I'm right or wrong, is it \$10,150 they're looking for for the baseball or is that wrong? You have a figure over here \$76,950 or...?

Mr. Brooks replied there is a difference of that amount for that portion of the wall. There are other portions off the wall that add to that cost that are identified as items here that the prices are not resolved.

Alderman DeVries stated maybe you can refresh all of our memories. The construction of the wall, was that required...I remember that it was so close to the baseball stadium that it had to be done as part of the construction project, but it's not actually required for the baseball stadium?

Mr. Brooks answered if there was no hotel, it would be vacant land, we would just have a simple outfield wall. Because there was a subdivision and that subdivision included a development that wanted a patio, the development said that if they had a wall on their property, according to the subdivision regulations, there's a 10-foot setback requirement, so they approached baseball to say would you build the wall on the baseball property, therefore, that 10-foot setback requirement would be

waivered and we could have a larger patio deck. And in doing that, they said that they would pay for the wall.

Alderman DeVries stated we certainly have been asking for the development of the baseball stadium to be hustled. We're hoping that that will open in a timely fashion and I think that message has always been loud and clear that we would like to have that as on time as possible, so how was that worked out or how could that have been worked out where we have one party being hustled and another party not yet approved or committed to a project? Is that basically why we are here today? That one party had to get construction going in order to meet a deadline, and the other party was able...? So by the time the second party...

Mr. Brooks answered correct. Let's say we went back last fall and all of the agreements were in place, the Roedel's would probably have designed and constructed the wall themselves with City oversight, with ballpark oversight. Because of just the schedule, we were forced to go forward with building the wall ourselves and then getting reimbursed for it. It's a similar situation with the roadway. Originally Chinburg was going to build the roadway. Because the schedule didn't fall into place, we were forced to take on that assignment in building the roadway and then get reimbursed based upon the agreed reimbursement costs.

Alderman DeVries stated if I could just finalize my comments. It sounds very much that the Fisher Cats always end up looking like the bad guys and sounds like unfortunately they're in the ground and they're going forward and there's not a whole lot they can do but to continue to try to work with the other parties that kind of have them over a barrel.

Chairman Lopez stated I think without getting into a long dialogue of everything, my understanding is that the closing was supposed to take place. The issue between the other party and the wall and what have you had nothing to do with the closing in my viewpoint. As far as I'm concerned either Roedel's closes and works out the details, because this could go on for months on one side, and what really disturbs me is that people knew this. Messages went out from the City Solicitor and the bond counsel to all parties to solve their problem before we have this meeting. Is that correct? Did you get a copy of that communication or who sent that communication out? Did bond counsel send out a communication to all parties?

Mr. Clark answered Attorney McCabe sent a correspondence to all parties. It may not have gone to Bob Brooks, I'm not sure he's on the list.

Chairman Lopez continued but to solve this and you know people come in here and say well this guy is not available but I guess the phone system is out or whatever the situation is, so it's up to the committee. We've got to give some direction here for the Roedel's.

Alderman Gatsas stated I assume the late comers agreement was part of that stack of agreements that were all executed that we didn't see. Or do you have a copy of...? I guess and certainly I understand that Alderman DeVries believes that the baseball team is always made to look like they're the bad guy, but I sit here and it always makes the City appear like we're the bad guys. We've extended everything to the 26<sup>th</sup>, we did what I believed was in the best interest of the City, here we now are on the 3<sup>rd</sup> of November, just closed an escrow, and I guess I confused because I don't understand... I need to see the late comers agreement because I've been looking for it here and I don't understand why we put ourselves in a risk position and nobody, bond counsel never explained to us that we were putting the City at risk but not going forward.

Mr. Clark stated Alderman, I don't have it with me. I thought it was given to you already, but I will double check and make sure you have it.

Alderman Gatsas stated if I knew we were talking about a particular item on the agenda that that hold harmless agreement was something, I could have dug it out of my filing cabinet down here, but I didn't.

Mr. Clark stated I understand. Just to make it clear, and I'm not saying that the City did anything wrong here, the City entered into a late comers agreement to make sure that this process could go forward and that was explained to the board. The position that we're taking at this point is that my best legal advice to the City is that you don't release that deed until you make sure the City's not on the hook for anything and the parties that...you just sent us a letter saying we agree, the City is not responsible, it's between baseball and the hotel, we'd would have been happy and we'd have given it to them. But there was closure on the escrow on the 26<sup>th</sup>, that's when we received the notice of the transfer of the funds. It wasn't just this month.

Chairman Lopez stated so the basic question Tom is this. We demand closing. What then?

Mr. Clark answered it's up to this committee. The committee has given them until the 26<sup>th</sup>, they closed in escrow, they are now asking at least as I read these letters, that they've met today and they are now asking to be allowed to talk to Drew Webber on Monday. It's up to the committee if they want to go forward with that or not.

Alderman Roy stated first a question for Bob Brooks again. According to your letter, third paragraph, first line, the Roedel's are willing to pay \$66,500 of the \$76,950 cost of the wall, which is part of your breakdown on the second page of your letter, confirmed by David Roedel's letter of the amount equaled the \$66,500 that he's willing to pay. Am I accurate with the cost difference being \$10,450?

Mr. Brooks answered for a portion of the wall, not for the entire wall. There are other elements of the wall.

Alderman Roy asked are the Roedel's responsible for other elements of the wall or just the part that abuts the hotel?

Mr. Brooks answered yes. It's our interpretation that they are responsible for the...

Chairman Lopez interjected Alderman, I don't want to go there because that's between them, I'm dealing with the closing and I want to stick with the closing, okay. Either we gave the extension and I don't want to go into dialogue of the negotiations between Roedel and the Fisher Cats agreement because we'll be here all night.

Alderman Roy stated I agree Chairman and I will get right to the closing. I just felt that the answer to Alderman Gatsas' question was not as specific as it could have been. Tom Clark, when it comes to the closing, have the Roedel's fulfilled everything up until this agreement with baseball that they've been required to do?

Mr. Clark answered that's the only item that's outstanding is the agreement and cost sharing.

Alderman Roy asked so at this point it's the City that is actually taking, keeping the deed in escrow until this issue has been resolved?

Mr. Clark answered that's what we were authorized to do. When this board authorized the extension, the board authorized the late comers agreement. The late comers agreement requires that a fair share be paid. Now if they have not agreed to a fair share, the City could be placed on the hook for it later, you would be subjecting yourself to lawsuits and that's not what we're going to allow to happen. They've got that worked out and they've been told that from day one both baseball and the Roedel's. That has to be worked out before the deeds are released.

Alderman Roy asked and has the City been given any accurate numbers besides what's in these two letters?

Mr. Clark answered the City has not asked for accurate numbers. The City has told the parties work it out yourselves, we don't care what the number is.

Alderman Smith asked Tom, what guarantee if we extend it to Monday, it seems like this letter doesn't say much. Drew Webber might say no.

Mr. Clark answered I don't have any guarantees. As was told to you, these letters just came in about five minutes before the meeting started. I've been on the horn and I know Tom Arnold has with the attorneys involved, we're not speaking directly to the developers at this point because of these legal entanglements, we're speaking with their attorneys. I know Mr. Clougherty is speaking to the developers directly; they've been told that they need to get this done. The Roedel's in speaking to the City today thought they had an agreement, baseball is not sure there was a meeting of the minds, but the Roedel's feel that they have an agreement with Drew and they wanted to talk to him on Monday. That's really all I can tell you. I can't give you any guarantees, we don't have any.

Alderman Smith stated it just seems to me, I was just going over my notes, it seems like Alderman Gatsas said the City has bent over backwards in this project. We've conceded and conceded from August to September, now you're asking a few more days. If no one here can give me a guarantee that anything will be finalized on Monday, can they?

Mr. Clark stated I can't give you a guarantee. No.

Chairman Lopez stated you've got a couple of things. The main closing immediately or give staff until Monday. What does the committee want to do?

Alderman Guinta asked we can't get in touch with Drew until Monday? That's the bottom line? He's the one that's got to make the decision? That's the bottom line?

Chairman Lopez replied that's the bottom line. Drew's got to make a decision on this issue.

Mr. Clark interjected as I understand it Drew's attorney is tied up in court this week. They've got a brief due Monday and there's a trial going on now and that's why he's not available.

Alderman Guinta moved to close immediately. There was no second to the motion.

Alderman DeVries asked I think the problem is that nobody is telling us where our greater risk is for dollar amounts and I'm not quite sure why we're not being told that. Maybe the only solution here is that they have until Monday, we have a meeting to demand closing Tuesday or as soon as the City Clerk can schedule us again.

Chairman Lopez stated the City Clerk can't schedule us until Wednesday. Deputy Clerk Johnson stated we can schedule you Monday but it's going to have to be in the conference room. The chamber is taken all week.

Alderman Smith stated I hate to mandate anything like this, but we've been going from week to week, month to month, but we can't mandate something and say if it isn't finalized on Monday, walk away.

Alderman Smith moved that the closing take place on Monday. There was no second to the motion.

Chairman Lopez interjected absolutely. The closing goes on Monday, if that's your motion and we'll move on in life.

Alderman Roy asked could the City Solicitor explain that the closing has taken place and that the deed is in escrow?

Chairman Lopez stated I'm not going there. The motion is that the closing with Roedel will take place Monday, that's it. All this other negotiation between the Fisher Cats and Roedel and all of that, they better solve their problems because the closing should take place.

Alderman Gatsas asked is it my understanding Tom that staff recommendation is that we don't close until the late comers agreement is agreed to?

Mr. Clark answered no. My legal recommendation to the City, and I know it's also bond counsel's recommendation, is that we do not close and exchange the deed until the parties tell us they've come to either an agreement or they agree that the City is not on the hook.

Alderman Gatsas asked is there anything else in that late comers agreement that could leave the City on the hook for anything else?

Mr. Clark answered no.

Alderman Gatsas asked so the only issue we're talking about is this wall?

Mr. Clark answered the batter's eye and the wall. Correct.

Alderman Gatsas asked and the road is not part of the late comers agreement?

Mr. Clark answered not with the Roedel's, no.

Alderman Gatsas asked with whom?

Mr. Clark answered it's part of the Chinburg...we've already closed on that part of it. That's already taken care of. That's not an issue here. The only outstanding cost is the batter's eye and the wall.

Chairman Lopez asked Kevin, this other thing can wait until the next meeting?

Mr. Clougherty answered sure, providing it's information to the... Monday is fine.

Alderman Gatsas asked when are you recessing the meeting until, Mr. Chairman?

Chairman Lopez answered until Monday. Is there any action that you want to give guidance to the staff? We don't have a meeting Monday and go through the same problems? What are your wishes?

Alderman DeVries answered the wish of this board has been indicated that we expect to see closing. I would also like to know what dollar amounts are at risk if we do either not close by Monday and decide to terminate with the Roedel's? I'd like to know what our risk is on that dollar amount versus what you think or suspect the risk is to the City in violation of the late comers agreement.

Chairman Lopez stated Mr. Brooks is shaking his head in answer to your question. Monday night we close and solve all of these problems or? Is that agreeable with the committee?

Alderman DeVries moved to recess this meeting until Monday, November 8, 2004. Alderman Guinta duly seconded the motion. The motion carried with Alderman Gatsas and Alderman Lopez duly recorded in opposition.

A True Record. Attest.

Clerk of Committee